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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA**

In re	) Chapter 7
	)
Susan Bereczky,	)
	) Case No: 22-50906 SLJ
Debtor.	)
	/
	)
Ildiko Dihen,	)
	)
	) Adv. Pro. No. 23-5001
	)
Plaintiff,	) Date: May 30, 2023
Vs.	)
	) Time: 1:30 p.m.
Susan Bereczky,	)
	)
Defendant.	)
	/

REPLY IN SUPPORT OF MOTION TO DISMISS

The Court set a deadline of April 3 for Plaintiff's amended complaint. Plaintiff failed to honor the Court's deadline, and proposes essentially that the Court ignore that error, and instead focus on the alleged merits of her case, as embodied in the late filed Second Amended Complaint.

1 When a party seeks relief from a proceeding due to mistake  
2 or inadvertence, then Rule 60(b)F.R.Civ.P., made applicable by  
3 Bankruptcy Rule 9024, is triggered.

4 The seminal 60(b) authority is Pioneer Inv.Serv. v  
5 Brunswick Assoc., 507 U.S.380,395(1993), and it sets forth a  
6 four-factor test, including this factor: "the reason for the  
7 delay, including whether it was within the reasonable control  
8 of the movant."

9 The bankruptcy court is not obligated to give equal weight  
10 to the four Pioneer factors. Rather, using its discretion the  
11 court must weigh the factors and then determine whether  
12 Plaintiff's neglect should be excused. In re PG&E, 331  
13 B.R.915,919(N.D. CA 2005). In *PG&E* no relief was given to a  
14 creditor, who, having been duly served with notice of  
15 commencement of the bankruptcy, failed to timely file a proof  
16 of claim. Similarly, excusable neglect was not found where  
17 failure of counsel to diligently check the docket resulted in a  
18 late filed appeal. In re Christiansen, 2007 Bankr. LEXIS 4823,  
19 BAP No. 07-1120 and 07-1121,\*14 and fn12(9<sup>th</sup> Cir. BAP  
20 11/5/2007).

21 The bankruptcy court may not base Rule 60(b) relief on the  
22 merits of the late filed complaint. In re Wylie, 349 B.R.  
23 204,210(9<sup>th</sup> Cir. BAP 2006). In the context of a failure to  
24 appear at the hearing on the debtor's objection to the  
25 creditor's claim and the creditor's excuse that the objection

1 was without merit, *Wylie* explained that "the merits of the  
2 claim objection are no longer fair game unless the claimant  
3 first establishes a good excuse, cognizable under FRCP 60(b),  
4 for its failure to timely contest the objection." *Id.*

5 Here, the Court must first determine whether Plaintiff's  
6 late filing of her Second Amended Complaint may be excused,  
7 before this matter may proceed to the merits.

8 Dated: 5/21/2023 /s/Stanley Zlotoff